

### **REMARKS**

Claims 1, 5, 8, 10-21, 23-27, 31 and 34-43 were pending in the application. Claim 1 is cancelled and new claims 44 and 45 are added herein. Thus, after entry of this amendment, **claims 5, 8, 10-21, 23-27, 31 and 34-45 will be pending**; of these, claims 15-17, 24-27 and 34-43 are currently withdrawn.

Claim 5 is rewritten as an independent claim and amended to incorporate the limitations of cancelled claim 1. Claims 5, 8, 15, 18, 21, 24, 26, 31, 34 and 35 are amended to replace “*shares* at least 95% amino acid sequence identity...” with “*has* at least 95% amino acid sequence identity...” and to delete reference to database accession numbers for clarity. New claims 44 and 45 find basis in original claim 32. No new matter has been introduced by these amendments.

### **REJECTION UNDER 35 U.S.C § 112, SECOND PARAGRAPH**

**Claims 1, 5, 8, 10-14, 18-21, 23 and 31** are rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. In particular, the Office objects to the recitation of “*shares* at least 95% amino acid sequence identity...” and to the inclusion of accession numbers. Claim 1 is cancelled herein rendering the rejection moot as it applies to this claim.

As suggested by the Examiner, claims 5, 8, 18, 21 and 31 are amended to replace the phrase “*shares* at least 95% amino acid sequence identity...” with the phrase “*has* at least 95% amino acid sequence identity...” These same claims are further amended to delete reference to database accession numbers. Withdrawn claims 15, 24, 26, 34 and 35 are similarly amended. All other rejected claims depend from (and thus incorporate all limitations of) one of the amended claims. Thus, Applicants submit that all claims are clear and definite and request withdrawal of this rejection under 35 U.S.C. § 112, second paragraph.

### **REJECTION UNDER 35 U.S.C § 103**

**Claim 1** is rejected under 35 U.S.C. § 103(a) as allegedly obvious in view of Cole *et al.* (Uniprot Accession No. P71571; May 30, 2000). Without arguing the merits of this rejection, claim 1 is cancelled herein without prejudice, rendering the rejection moot.

**REQUEST FOR REJOINDER**

Applicants continue to request rejoinder of withdrawn claims 15-17, 24-27 and 34-43 (Groups II to VIII). As noted in the Amendment and Response filed July 6, 2010, the restriction requirement dated February 25, 2009 asserted that the claims comprise eight groups, which lack a unifying special technical feature in view of Weller *et al.* (*Science* 297:1686-1689, 2002). In the response to the restriction requirement filed April 23, 2009, Applicants argued that the Weller *et al.* reference cannot serve as a basis for such a finding. In support of this argument, Applicants submitted a partially signed Declaration under 37 CFR § 1.132 (Declaration) by inventors Aidan J. Doherty, Marina Della, Geoffrey R. Weller and Stephen P. Jackson. The Declaration stated that any subject matter of the claimed invention that is described in Weller *et al.* is the work of the inventors alone, notwithstanding the presence of other co-authors on the reference, who worked under the direction of the inventors. Additionally, Applicants noted that Weller *et al.* was published less than one year before the filing date of the instant application and cannot serve as prior art under 35 USC § 102(b). On July 6, 2010, Applicants submitted a fully signed copy of the Declaration, thereby perfecting the Declaration submitted April 23, 2009. Accordingly, Applicants request that the requirement for restriction be withdrawn and that Groups II through VIII be rejoined and fully examined for patentability.

## CONCLUDING STATEMENT

Applicants believe that the foregoing comprises a full and complete response to the Office action of record. Withdrawal of the pending rejections and allowance of the claims is respectfully requested. If the Examiner believes that there are any remaining issues in the case that could be resolved by a telephonic interview, the Examiner is encouraged to contact the representative for Applicants listed below to discuss any outstanding matters.

Respectfully submitted,

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